Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

GEORGE PRICE, *ET AL.*,

Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal from the United States District Court for the District of Columbia

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JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

I. Whether evidence probative of discriminatory purpose under *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), may be excluded from consideration in a preclearance action under Section 5 of the Voting Rights Act solely because that evidence also would be relevant to a discrimination action brought under Section 2 of the Act.

II. Whether evidence probative of discriminatory purpose under *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), may be excluded from consideration in a preclearance action under Section 5 solely because the election plan at issue is not retrogressive.

III. Whether the court in a Section 5 preclearance action may itself assume the burden of explaining and rebutting clear evidence of discriminatory purpose when the covered jurisdiction itself fails to carry that burden.

IV. Whether a covered jurisdiction meets its burden of proof in a Section 5 preclearance action when it identifies some nondiscriminatory reason for its redistricting plan, but then fails to rebut clear evidence showing other discriminatory reasons for the plan.

V. Whether the fact that a non-retrogressive voting change would result in a clear violation of Section 2 constitutes an independent basis for the denial of preclearance under Section 5.

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JURISDICTIONAL STATEMENT

OPINION BELOW

The decision of the United States District Court for the District of Columbia ("D.C. District Court") is reported at 907 F. Supp. 434 (D.D.C. 1995). App. 1a-65a.[1]

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[1] In this Jurisdictional Statement, filed on behalf of Defendant-Intervenors George Price, *et al.*, citations are to the Appendix ("App.") filed with the Jurisdictional Statement of Janet Reno, *et al.*, on March 11, 1996.

JURISDICTION

The decision of the three-judge panel of the D.C. District Court, which had jurisdiction pursuant to 42 U.S.C. § 1973c, was entered on November 2, 1995. The notice of appeal on behalf of defendant-intervenors George Price, *et al.* ("Defendant-Intervenors"), was filed on January 2, 1996. *See* Appendix attached hereto. On February 28, 1996, the Chief Justice extended the time in which to file a jurisdictional statement to March 18, 1996. This Court has jurisdiction over this appeal pursuant to 42 U.S.C. § 1973c.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Fifteenth Amendment provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Sections 2 and 5 of the Voting Rights Act, 42 U.S.C. § 1973, 1973c are reproduced in the Appendix. App. 165a-167a.

STATEMENT

I. INTRODUCTION

In this case, the stipulated and unrebutted evidence "demonstrates overwhelmingly" that the Bossier Parish School Board ("Bossier" or the "School Board") adopted its redistricting plan for a discriminatory purpose. App. 63a. Indeed, there was unchallenged evidence with respect to every factor indicating discriminatory purpose set forth by this Court in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). Therefore, the Attorney General of the United States ("Attorney General") properly refused to administratively preclear Bossier's reapportionment plan

under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c ("Section 5").[2] Moreover, based on her review of the "extensive record" Judge Gladys Kessler, in dissent, concluded "[n]ot only does the evidence fail to prove the absence of discriminatory purpose, it shows that racial purpose fueled the School Board's decision." App. 39a.

Nevertheless, the majority below, Judges Laurence Silberman and Charles Richey, granted preclearance. Through a series of legal errors, the majority refused to consider much of the stipulated evidence, developed its own rebuttal of unchallenged evidence, and applied an incorrect legal standard to the remaining proof of discriminatory purpose. First, the majority erroneously held that evidence of discriminatory intent must be ignored in a Section 5 preclearance action if it also would be relevant in a discrimination case brought under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973 ("Section 2"). In addition, the majority excluded other evidence based on its misreading of this Court's recent decision in *Miller v. Johnson*, 115 S. Ct. 2475 (1995), as effectively limiting Section 5's discriminatory purpose inquiry to instances of retrogression. The majority also improperly invented explanations for unrebutted evidence of statements by School Board members that reveal the Board's racial intent. Finally, the majority misapplied *Arlington Heights* by concluding that the presence of some legitimate, non-racial reason for Bossier's decision was sufficient to overcome unrefuted

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[2] Section 5 of the Voting Rights Act bars "covered" jurisdictions from implementing any change in their voting practices until they secure approval—"preclearance"—either from the Attorney General or from the D.C. District Court. To obtain preclearance, the state or locality must bear the burden of proving that its proposed voting change "[1] does not have the *purpose* and [2] will not have [the] *effect* of denying or abridging the right to vote" on account of race. *Id.* (emphasis added).

evidence that a discriminatory purpose also was a motivating factor in the decision.

This radical reworking of the standards governing review of discriminatory purpose under Section 5 conflicts with this Court's clear precedents. The majority's legal errors also create conflicts among the three-judge panels of the D.C. District Court, which has exclusive jurisdiction over Section 5 actions, and pose a significant threat to the fair and effective enforcement of the Voting Rights Act. Finally, the court below also erred in ruling that a clear violation of Section 2 does not provide an independent basis for denying Section 5 preclearance.

II. STATEMENT OF FACTS

Unrebutted evidence of discriminatory purpose, much of it in the form of stipulations, App. 66a-153a (¶¶ 1-285), addressed all of the factors discussed by this Court in *Arlington Heights*: (1) "[t]he impact of the official action whether it 'bears more heavily on one race than another;'" (2) "[t]he historical background of the decision;" (3) "[t]he specific sequence of events leading up [to] the challenged decision [including] . . . [d]epartures from the normal procedural sequence;" (4) "substantive departures . . . [from] factors usually considered important;" and (5) "administrative history" and other "contemporary statements by members of the decisionmaking body." 429 U.S. at 267-68. The facts with respect to each of these areas are summarized below.

A. The Effect of the Plan. In 1992, the School Board adopted a twelve single-member-district reapportionment plan with twelve majority-white districts. Bossier Parish, Louisiana has a population that is 20.1% black, App. 67a (¶ 5), and a voting age population that is 17.6% black. *Id.* at 2a. No black candidate, however, has ever been elected to the twelve-member School Board. *Id.* at 67a (¶ 4). As the

parties stipulated below, this is because voting in Bossier Parish is racially polarized. *Id.* at 122a-27a (¶¶ 181-96).[3] The foreseeable impact of the Board's adoption of a redistricting plan with all majority-white districts, therefore, was to ensure that whenever black voters and white voters prefer different candidates, white voters' preferences will prevail. App. 41a.

It was clearly possible, however, respecting traditional redistricting criteria, to draw a reapportionment plan for Bossier Parish that does not have *all* majority-white districts. App. 41a. The School Board stipulated that it was "obvious that a reasonably compact black-majority district could be drawn within Bossier City," *id.* at 76a (¶ 36), and that the outlines of a second such district in the northern part of the parish were "readily discernible." *Id.* at 114a (¶ 148). Admittedly, by fragmenting or "fracturing" predominantly black residential areas, however, the Board avoided drawing any majority-black districts. *Id.* at 111a, 112a (¶¶ 137-38, 142).

B. The School Board's History. The School Board's history of discrimination against black citizens demonstrates why it wanted twelve majority white districts; so long as black voters had no voice, the all-white School Board could safely ignore their concerns,

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[3] The adverse effects of racially polarized voting on the ability of black voters to elect candidates of their choice are exacerbated in Bossier Parish by the effects of past discrimination. App. 130a-36a (¶¶ 213-32) (past history of denial of access to political system); *Id.* at 136a-38a (¶¶ 234-43) (history of discrimination in education). It was undisputed below that the depressed socioeconomic and educational levels of black citizens of Bossier Parish make it hard for them to obtain necessary electoral information, organize, raise funds, campaign, register, and turn out to vote; these factors in turn cause a depressed level of political participation. *Id.* at 127a-30a (¶¶ 197-202, 206-12).

and for decades, to the present day, this has been the case.

The dark history of voting discrimination in Bossier Parish was undisputed below. App. 130a-36a (¶¶ 213-32); *id.* at 42a-46a. Likewise, the School Board admitted that it segregated its schools, actively resisted desegregation, and has never fully remedied its constitutional violation. In recent years, moreover, the School Board's student and faculty assignment policies have made its schools more racially isolated than they were when it unsuccessfully applied for unitary status in 1979. App. 136a-38a (¶¶ 231-43); *id.* at 45a-46a.

Black citizens have tried without success to alter these policies and practices. Bossier is required by federal court order to maintain a bi-racial committee to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." App. 103a (¶ 111). The Board admitted that, for decades, it simply ignored this requirement altogether. *Id.* at 103a-04a (¶ 112). In 1993, the Board established a committee, but when black members made substantive suggestions, the Board unilaterally disbanded the committee. App. 105a (¶ 116); *id.* at 46a. As School Board members admitted, they did not want this committee getting into "policy" questions. *Id.* at 46a. Thus, even in the face of a federal court mandate to listen to the concerns of the black community, Bossier refused to do so. Therefore, the black citizens of Bossier Parish are effectively cut off from any opportunity to have a voice in the operation of their public schools. Adopting a redistricting plan with twelve majority-white districts continued this pattern of exclusion.

C. The Sequence of Events Leading Up to Adoption of the Plan. The Board similarly ignored requests by black leaders to participate in the redistricting effort, employing a process characterized by "public silence and private decisions." App. 50a. The redistricting process began in May, 1991, when the

Board decided to develop its own plan rather than adopt the one previously accepted by the Police Jury.[4] Given the fact that the next School Board election was not scheduled until November, 1994, there was no need for hasty Board action. *Id.* at 4a. The Board hired Gary Joiner, the cartographer who had drawn the Police Jury plan. *Id.* He was hired to perform 200-250 hours of work, far more time than would be needed simply to recreate the Police Jury plan. *Id.* at 94a (¶¶ 86-87).

On July 29, 1991, the Police Jury plan was precleared by the Justice Department. App. 3a. The parties stipulated, however, that the Police Jury had provided incorrect and incomplete information in its Section 5 submission. The Police Jury and Gary Joiner were "specifically aware that a contiguous black-majority district could be drawn both in northern Bossier Parish and in Bossier City." *Id.* at 76a, 82a-83a, 84a (¶¶ 36, 52-53, 57). However, they lied to the public, *id.* at 83a (¶ 54), to the only black police juror, *id.* at 81a (¶ 47), and to the Attorney General, *id.* at 87a (¶¶ 65-66), by claiming that drawing any majority-black district was impossible. Despite these misrepresentations, some black community groups opposed the plan and specifically asked that their letter expressing concerns about it be included in the Police Jury's Section 5 submission. *Id.* at 69a, 87a (¶¶ 11, 65-66). Joiner and the Police Jury did not include it. *Id.* Had the Police Jury made a complete and truthful submission, however, the Attorney General clearly would have denied preclearance.

School Board member Thomas Myrick participated in several private meetings with Joiner and white police jurors during this time. App. 5a; *id.* at 81a, 93a-94a

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[4] The Police Jury is the Parish governing body, comparable to a county council or commission in most states. App. 2a; *id.* at 67a (¶ 3).

(¶¶ 48, 85). After these meetings, Myrick, who lives in an area that "would likely be included in any majority black district to be drawn in the northern part of Bossier Parish," *id.* at 81a (¶ 48), recommended that the School Board adopt the Police Jury plan. *Id.* at 95a (¶ 90). On September 5, 1991, however, the School Board decided *not* to adopt the Police Jury plan, largely because it would pit incumbents against each other. App. 47a. Over the course of the next year, School Board members considered a number of redistricting options. *Id.* Mr. Joiner met privately with School Board members and demonstrated different possibilities to them on his computer. *Id.* at 97a (¶ 96). These meetings were not open to the public nor were there any recorded minutes or published notices of the meetings. *Id.*; App. 47a.

While the School Board was meeting and planning in private, the black community was trying, unsuccessfully, to participate in public. *Id.* In March of 1992, George Price, on behalf of a coalition of black community groups, wrote the School Board asking to participate in its redistricting process. App. 5a; *id.* at 96a (¶ 93). Neither the Board nor the Superintendent responded to this request. *Id.* In August of 1992, Mr. Price sent another letter asking specifically to be involved in every aspect of the redistricting process. Again, the School Board made no response. *Id.* (¶ 94).

Frustrated by the School Board's unresponsiveness, Price contacted the NAACP Redistricting Project. App. 98a (¶ 98). The Project developed a partial plan for Price to discuss with the School Board. That illustrative plan consisted of two majority-black districts. *Id.* The plan did not show the other ten districts that made up the Parish. *Id.* When Price gave this information to a school district official, he was told that it would not even be considered because it only showed two districts. *Id.* (¶ 99). Price went back to the NAACP, and a complete twelve-district illustrative plan was drawn up. *Id.* Then, on September 3, 1992, when Price appeared on behalf of

the black community at a Board meeting and presented a new plan showing all twelve districts, including ten majority-white and two majority-black districts, the Board dismissed it summarily, claiming incorrectly that it could not even consider any plan that split precinct lines. *Id.* at 98a-100a (¶¶ 100-02). Until that time, however, the School Board had been actively considering alternatives to the Police Jury plan, almost all of which would have split precincts. *See* App. 29a; *id.* at 72a (¶ 23).

At the School Board's next meeting, on September 17, 1992, Mr. Price again presented the NAACP's illustrative plan. App. 100a-101a (¶ 106). Instead of discussing the plan with Mr. Joiner, or asking him to further analyze the possibility of drawing black-majority districts without splitting precincts (the School Board's purported reason for rejecting the plan, *but see id.* at 72a (¶ 23)), the Board responded by immediately passing a motion of intent to adopt the Police Jury plan. *Id.* at 48a.

On September 24, 1992, an overflow crowd attended the required public hearing on the redistricting plan. App. 7a. Fifteen people spoke against the School Board's proposed plan, most of whom objected because it would dilute minority voting strength. App. 8a; *id.* at 101a (¶ 108). Not a single person spoke in favor of the plan. *Id.* At this hearing, Mr. Price also presented the Board with a petition signed by more than 500 Bossier Parish citizens, asking the Board to consider an alternative redistricting plan. *Id.* at 7a-8a.

Despite the one-sided input from Bossier citizens, and despite the fact that the Board was under *no* time pressure to decide the issue, the Board voted, at its very next meeting on October 1, 1992, to adopt the Police Jury plan. As with the meetings of September 3 and September 17, 1992, the minutes of this meeting reflect virtually no substantive consideration of the Police Jury plan.

Board Member Myrick later testified, however, that the Board adopted the plan that evening because it was "expedient." App. 49a. The Police Jury plan only became "expedient" when the School Board was publicly confronted with an illustration that alternatives to twelve white-majority districts were possible. *Id.* Faced with the growing frustration of the black community at being excluded from educational policy decisions and from the electoral process, the only way for the School Board to ensure a plan with all majority-white districts was to adopt the Police Jury plan quickly, despite its other drawbacks. App. 49a; *id.* at 7a-8a, 28a.

D. The Plan Adopted Compared to the Board's Redistricting Criteria. The Board, without explanation, adopted a plan which departs substantively from its earlier districting plans and ignores factors that it had previously considered paramount. App. 50a. The plan forced incumbents to run against one another. *Id.* at 8a. It also created several districts that, according to its own cartographer, are not compact, *id.* at 111a-12a (¶ 139), including Thomas Myrick's district which contains almost half of the geographic area of the Parish. *Id.* at 112a (¶ 140). These districts do not track school attendance boundaries. In fact, some of them do not even contain a school. App. 8a; *id.* at 112a (¶ 141). However, they do split black communities, and all of them have a white majority. *Id.* at 110a-11a (¶¶ 135-37).

E. The Board Members' Contemporaneous Statements. The School Board "left virtually no legislative history" of its decision. App. 55a n.11. Three School Board members, however, made contemporaneous statements revealing the Board's discriminatory purpose. App. 5a-6a n.4. School Board member Henry Burns told a black acquaintance that while he "personally favors having black representation on the board, other school board members oppose the idea." *Id.* The School Board offered no evidence denying or explaining this statement. School Board

member Barry Musgrove told a prominent black leader that "while he sympathized with the concerns of the black community, there was nothing more he could do . . . on this issue because the Board was 'hostile' toward the idea of a black-majority district." *Id.* Finally, School Board member Thomas Myrick, who lives in an area that could readily accommodate a black-majority district and contains two schools (both of which have student enrollments that are more than 75% black), told black leaders that he would not "let [them] take his seat away from him." App. 5a-6a n.4.

F. The Board's Later Explanations of Its Motives. After the fact, the School Board sought to justify its actions with a flurry of explanations, including several which even the majority below found "clearly were not real reasons." App. 27a n.15. For example, the School Board argued that it adopted the Police Jury plan (on October 1, 1992) to comply with *Shaw* v. *Reno*, 113 S. Ct. 2816 (1993) (decided June 28, 1993), even though *Shaw* was decided nine months *after* the Board adopted its plan. *Id.*

The School Board also reiterated its false claim that it could not adopt a plan without twelve majority-white districts because any such plan would require precinct-splitting, which it erroneously claimed violates state law. App. 56a. Throughout the redistricting process, however, the School Board was willing to split precincts for the protection of incumbents. *Id.* It was only *after* the black community presented its alternative plan that the School Board proffered the "no precinct-splitting" rationale. Indeed, the majority below found that when "the School Board began the redistricting process, it likely anticipated the necessity of splitting some precincts." *Id.* at 29a. Furthermore, it was undisputed that splitting precincts does not violate state law; while the School Board itself may not split precincts, police juries have the authority to establish and modify precinct

lines, and many do so when requested by a school board. *Id.* at 69a-73a, 85a-86a (¶¶ 13-25, 60-61).

Nor did the School Board voice any concern in its initial submission to the Attorney General about a high number of precinct splits causing higher election costs. App. 57a. The Board never estimated the cost of splitting precincts before it voted to adopt the Police Jury plan. *Id.* Obviously, "cost" did not actually motivate the School Board's decision at the time it was made. *Id.*

Bossier's final proffered justification for adopting the Police Jury plan was that it guaranteed preclearance; that is, the Attorney General would approve the School Board's plan because it was identical to the Police Jury plan which already had been precleared. App. 57a-58a. However, "guaranteed preclearance" was not the School Board's main objective; if the School Board's paramount concern had been preclearance, it would not have waited until October 1, 1992—almost 14 months later—to adopt the Police Jury plan. *Id.* If guaranteed preclearance was so important to the Board, it could have acted soon after the Police Jury plan was precleared by the Justice Department on July 29, 1991. *Id.* Moreover, adopting a plan with one or more majority-black districts certainly would not have made preclearance *less* likely.

III. THE PROCEEDINGS BELOW

A. Administrative Preclearance Review. While the School Board had acted precipitously in approving its redistricting plan on October 1, 1992, it was not submitted to the Department of Justice for preclearance until January 4, 1993. App. 103a (¶ 110). After requesting additional information, the Attorney General interposed a timely objection to Bossier's plan. *Id.* at 154a, 106a-07a (¶¶ 118-19). The School Board met in closed session and decided to seek reconsideration. *Id.* at 107a (¶¶ 120-22). The Attorney General denied this

request on December 20, 1993. *Id.* at 159a, 108a (¶ 125).

B. The Declaratory Judgment Action. On July 8, 1994, Bossier filed this action against the Attorney General in D.C. District Court. A group of black voters in Bossier Parish, George Price, *et al.*, intervened as defendants in support of the Attorney General. The Defendant-Intervenors suggested below that the three-judge court decide this case based solely on the issue of discriminatory purpose. The Attorney General agreed that the evidence clearly established discriminatory intent, but also argued that much of the same evidence also established a clear violation of Section 2 and that such a violation constitutes independent grounds for denying preclearance. Rather than possibly face the additional costs of defending a Section 2 lawsuit in Louisiana, Bossier itself also stipulated that "Section 5 preclearance . . . must be denied if the plan violates Section 2." App. 11a n.7; *id.* at 144a (¶ 257). The court below, however, rejected this invitation from the parties and ruled that Section 2 analysis may not be incorporated into a Section 5 review. *Id.* at 11a-24a.

The majority went much further, however, ruling that no "*evidence* of a section 2 violation" may be used to establish "discriminatory purpose under section 5." App. 23a (emphasis added). Ignoring the fact that much of the same evidence used in establishing a Section 2 violation is independently probative of discriminatory intent under *Arlington Heights*, and other precedents of this Court, the majority flatly held that it would "not permit *section 2 evidence* to prove discriminatory purpose." *Id.* at 24a (emphasis added).

The majority then held that this Court's decision in *Miller* also disallowed it from considering the adverse effect of the plan on black voters as evidence of discriminatory purpose. The majority held that "the adoption of one non-retrogressive plan [that contains no majority-black districts] rather than another non-

retrogressive plan that contains [some] majority-black districts cannot by itself give rise to the inference of discriminatory purpose." App. 35a. As a result, the majority excluded from its consideration much of the evidence of discriminatory intent in this case.

Because the majority excluded this evidence, it saw no problem in Bossier's failure to rebut it, effectively relieving the School Board of its burden of proof. The majority likewise shifted the burden of proof away from Bossier to the Attorney General when it developed its own theories about the meaning of contemporaneous statements by Board members. Apparently based on its concerns about the "federalism costs" of Congress' decision to allocate the burden of proof in Section 5 actions to covered jurisdictions, App. 21a n.10, the majority invented explanations for the discriminatory statements of School Board members, even where Bossier had offered no explanation. *See id.* at 30a-32a.

Finally, the majority also erred as a matter of law by concluding that since it found that the School Board had "at least two . . . 'legitimate, nondiscriminatory motives,'" Bossier had met its burden of proof. App. 27a (quoting *New York v. United States*, 874 F. Supp. 394, 400 (D.D.C. 1994)). The majority thus ignored the School Board's burden of producing some evidence that the proposed changes were not also motivated in part by a discriminatory purpose.

Judge Kessler, alone among the panel, considered the entire "extensive record" below and applied the *Arlington Heights* standard. She concluded that Bossier had failed to carry its burden of proving that it acted solely with "legitimate, nondiscriminatory motives." App. 37a (quoting *New York*, 874 F. Supp. at 400). Indeed, Judge Kessler, looking at all the evidence, found that it "demonstrates overwhelmingly" that "racial purpose fueled the School Board's decision." *Id.* at 63a, 39a.

REASONS FOR NOTING PROBABLE JURISDICTION

This Court should note probable jurisdiction because the majority's legal errors in excluding and improperly explaining away plainly probative evidence of discriminatory intent depart from this Court's clear precedents. Likewise, the majority departed from this Court's precedents in ruling that the presence of some legitimate motive was sufficient to meet Bossier's burden of proving the absence of discriminatory purpose under Section 5. Not surprisingly, these dramatic departures from precedent also have created splits among the panels of the D.C. District Court. This Court should resolve these splits. Most importantly, the majority's radical reworking of Section 5 discriminatory purpose analysis poses a substantial threat to the fair and effective enforcement of the Voting Rights Act.

The majority dramatically departed from this Court's precedents and created a split among panels of the D.C. District Court by indicating that it was compelled to ignore much of the probative evidence of discriminatory intent under *Arlington Heights* and *Rogers* v. *Lodge*, 458 U.S. 613 (1982), because it rejected the argument that Section 2 should be incorporated into Section 5. As the unanimous three-judge panel in *Arizona* v. *Reno*, 887 F. Supp. 318 (D.D.C. 1995), *appeal dismissed*, No. 95-299 (Mar. 1, 1996), held, however, whether or not Section 2 is incorporated into Section 5, the standards set forth by this Court in *Arlington Heights* should guide the lower courts' analysis of discriminatory intent under Section 5. The majority's improper standard, which excludes relevant evidence of intent, would insulate all but the most brazen racial discrimination from meaningful Section 5 review.

The majority also misread this Court's decision in *Miller* to limit the discriminatory purpose inquiry under Section 5 to the question of whether there is an intent to retrogress. The majority held that the impact of any non-retrogressive election change cannot give rise to an

inference of discriminatory purpose. App. 35a. Both the decisions of this Court and other decisions of the D.C. District Court, however, make clear that the Section 5 discriminatory purpose inquiry should not be so limited. This case, moreover, demonstrates the fundamental importance of this issue; the majority opinion would effectively insulate from Section 5 review any discriminatory redistricting plan or other voting change in every jurisdiction with no minority representatives and in every jurisdiction in which minority voting strength is already unlawfully diluted.

By refusing to consider both the so-called "Section 2 evidence" and the adverse, albeit non-retrogressive, impact of Bossier's plan on black voters, the majority also effectively shifted the burden of proof on the issue of intent to the Attorney General, although Congress has placed it squarely on the covered jurisdiction. By erroneously excluding such evidence of discriminatory intent (most of it stipulated), the majority relieved Bossier of the burden of rebutting this evidence, a burden the School Board failed even to attempt to meet at trial. The majority, moreover, provided its own "nondiscriminatory" explanations for inculpatory statements by School Board members, when in fact Bossier had offered no evidence explaining these statements at all. These errors improperly shift the burden of proof on the issue of discriminatory purpose and seriously undermine Section 5.

The majority also erroneously ruled that Bossier need only establish at least some non-discriminatory motivations for its decision in order to carry its burden of proof. The proper standard is not, however, whether the Board acted *only* with a discriminatory purpose, but whether, as this Court explained in *Arlington Heights*, such intent was "*a motivating factor*" in the decision. 429 U.S. at 265-66 (emphasis added). This Court should correct this second fundamental departure from

Arlington Heights, because the majority's standard would gravely undermine Section 5.

Finally, the majority held that a clear violation of Section 2 does not constitute an independent basis for the denial of Section 5 preclearance. This misreading of Section 5 would also seriously damage fair and effective enforcement of the Voting Rights Act.

I. THIS COURT SHOULD CORRECT THE MAJORITY'S SUBSTANTIAL DEPARTURE FROM THIS COURT'S DECISION IN *ARLINGTON HEIGHTS* AND RESOLVE THE SPLIT WITHIN THE D.C. DISTRICT COURT CREATED BY THE MAJORITY'S HOLDING THAT PLAINLY PROBATIVE EVIDENCE OF DISCRIMINATORY PURPOSE MUST BE EXCLUDED FROM CONSIDERATION IN A SECTION 5 ACTION IF IT ALSO WOULD BE RELEVANT IN A SECTION 2 ACTION.

The majority erroneously held that any evidence also relevant to a Section 2 claim could not be used to prove discriminatory purpose under Section 5. App. 24a. This unprecedented ruling departs from the controlling decisions of this Court, creates a conflict among panels of the only court with original jurisdiction over Section 5 actions, and would dramatically restrict the scope of Section 5 review.

The proper standard for determining the existence of racially discriminatory purpose in a Section 5 action, as the dissent below recognized, is that set forth in *Arlington Heights*. The majority below, however, made no mention of *Arlington Heights*. App. 39a-40a n.2. In *Arlington Heights*, this Court carefully guided the federal courts on the types of factors to be considered in determining whether there is discriminatory intent. 429 U.S. at 266-68; *see supra* pages 4-5. These factors are not exhaustive, however. *Id.* at 268. Other relevant factors have been discussed in cases such as *Rogers* v. *Lodge*, 458 U.S. 613 (1982). Indeed, courts must look to

"the totality of the relevant facts" to determine whether the challenged system was created or maintained with an intent to discriminate. *Id.* at 618.[5] The majority's exclusion of probative evidence of discriminatory purpose is irreconcilable with the "sensitive inquiry" into the "totality of the relevant facts" that this Court requires. *Arlington Heights,* 429 U.S. at 266; *Rogers,* 458 U.S. at 618.

The record here includes evidence of discriminatory intent in every area discussed in *Arlington Heights* and *Rogers*. Under the rubric of "Section 2 evidence," however, the majority disregarded virtually all of this evidence. Instead, the majority briefly discussed only two types of evidence, the "sequence of events leading to the school board's adoption of the police jury plan" and the "alleged statements of three School Board members." App. 33a, 31a.[6] The majority refused even

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[5] *See also Barnett* v. *Daley,* 32 F.3d 1196, 1203 (7th Cir. 1994) (reversing dismissal of complaint alleging Fourteenth Amendment violation through adoption of redistricting plan which unduly limited number of majority-black election districts); *Buchanan* v. *City of Jackson,* 708 F.2d 1066 (6th Cir. 1983) (summary judgment on intent issue unwarranted in light of circumstantial evidence of discrimination); *Perkins* v. *City of West Helena,* 675 F.2d 201 (8th Cir.) (reversal of finding of no discriminatory intent based on failure to consider all of relevant evidence), *aff'd,* 459 U.S. 801 (1982).

[6] The majority's legal error not only led it to ignore much of the relevant evidence completely, it also infected its factual findings concerning the balance of the evidence. Only by ignoring the plan's actual effects on black citizens, for example, was the majority able to find that the School Board acted to avoid "agitation within the black community" (that is, black participation in a public hearing), *compare* App. 28a *with id.* at 100a-02a (¶¶ 106, 108), and "ominous clouds" over the redistricting (that is, negative public input from black voters), *id.*, and still conclude that the sequence of events it recounts is not even "probative" of discriminatory purpose. App. 33a-34a. As the dissent points out, "the majority's unduly charitable

to consider the rest of the evidence that "demonstrates overwhelmingly" the Board's discriminatory purpose. App. 63a.[7] The majority here used the term "Section 2" evidence to categorize and disregard the voluminous and uncontroverted evidence of historical discrimination, *see e.g., id.* at 115a-40a (¶¶ 153-248), the School Board's recent non-responsiveness to the black community, even in direct contravention of a federal court order, *see id.* at 103a-06a (¶¶ 111-17), and the adverse effect of the redistricting plan on black voters. *See id.* at 23a-25a.

This Court should note probable jurisdiction to correct this error and to reaffirm its prior holdings that in the Section 5 context "[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights*, 429 U.S. at 266. As the dissent points out, excluding all so-called "Section 2 evidence," including evidence of historical discrimination and the adverse effect of the plan on black voters, "contravenes [this] Court's explicit direction in *Arlington Heights*." App. 42a-43a n.4.

This Court, moreover, only recently confirmed in *Miller*, that a "new apportionment . . . [that] so

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characterization" of these events as "not . . . laudable" ignores the fact that "School Board Members did more than simply retreat from political debate; in the guise of 'expediency', they excluded black citizens from the only process that would allow that community to elect a candidate of its choice." *Id.* at 58a n.12.

[7] The majority also apparently refused to consider evidence of "history and context" in evaluating discriminatory intent because this "history and context" is in part the reason the School Board "is subject to section 5 at all" and evaluating this "history and context" in more detail than Congress did in enacting the Voting Rights Act would be "double counting." App. 24a n.12. This ruling also is inconsistent with this Court's previous Section 5 discriminatory purpose decisions.

discriminates on the basis of race or color as to violate the Constitution," should be denied preclearance under the purpose inquiry of Section 5. 115 S. Ct. at 2492 (quoting *Beer v. United States,* 425 U.S. 130, 141 (1976)). A Section 5 discriminatory purpose case, therefore, requires an inquiry into whether there is unconstitutional discrimination. To determine whether a reapportionment plan is unconstitutional, according to this Court, requires analysis of the type of evidence discussed in *Arlington Heights* and *Rogers*. In *Rogers*, this Court explicitly considered the factors previously set forth in *Zimmer* v. *McKeithen*, 485 F.2d 1297 (5th Cir. 1973), *aff'd on other grounds sub nom., East Carroll Parish Sch. Bd.* v. *Marshall*, 424 U.S. 636 (1976), as probative, but not determinative, of discriminatory intent. 458 U.S. at 619-21. These same factors guide a Section 2 court's inquiry into whether the "totality of the circumstances" indicates unreasonable minority vote dilution, but this did not prohibit this Court from relying on them as evidence of unconstitutional discrimination as well. It is illogical and contrary to this Court's decisions to suggest, as the majority does, that evidence probative of a Section 2 violation may not also be probative of intentional vote dilution under the Fourteenth and Fifteenth Amendments.

As the dissent below points out, the majority's decision also conflicts with recent decisions by other panels of the D.C. District Court. App. 42a-43a n.4. Most recently, the unanimous panel in *Arizona* explained that nothing in the statute or the case law leads to the majority's conclusion below: "Although the inquiry required under the purpose prong of section 5 extends in areas that would also be relevant in a section 2 proceeding, this is not equivalent . . . to holding that the [Attorney General] could prevent clearance merely by establishing a section 2 violation." 887 F. Supp. at 323. Such evidence, "in accordance with *Arlington Heights*, [would] be just one factor among many that [the] court would have to consider, together with other evidence in

the record, in determining whether these changes were motivated by a discriminatory purpose." *Id.* at 324 (citing *Busbee v. Smith*, 549 F. Supp. 494, 516-18 (D.D.C. 1982), *aff'd*, 459 U.S. 1166 (1983)). The unanimous panel in *New York* also apparently agreed with the *Arizona* panel, and not with the majority below on this issue: "[D]iscriminatory intent may be inferred from circumstantial evidence, including '[e]vidence of historical discrimination.'" 874 F. Supp. at 401 (quoting *Busbee*, 549 F. Supp. at 517). This Court alone can resolve this split.

Finally, by refusing to engage in the type of inquiry into discriminatory purpose required by *Rogers* and *Arlington Heights*, the majority eviscerates the purpose prong of Section 5. If the Attorney General and the D.C. District Court cannot look at the context and consequences of voting changes, the majority's decision makes clear that only the most brazen racial discrimination, such as that admitted in official minutes, will be prohibited by Section 5. In the 1990's, however, even government bodies bent on discrimination, like the School Board here, know enough to say nothing about their intent on the record. *See* App. 55a n.11. The effect of the majority's truncated analysis, therefore, would be to write the discriminatory purpose prong out of Section 5.

II. THIS COURT SHOULD RESOLVE THE SPLIT WITHIN THE D.C. DISTRICT COURT CONCERNING WHETHER RETROGRESSION IS THE ONLY ADVERSE IMPACT ON MINORITY VOTERS THAT MAY GIVE RISE TO AN INFERENCE OF DISCRIMINATORY PURPOSE UNDER SECTION 5.

The majority also errs in expressly concluding that, in the context of a Section 5 discriminatory purpose inquiry, vote dilution does not count unless it is retrogressive. The parties agreed that Bossier's plan was not retrogressive and, therefore, did not violate the

"effect" prong of Section 5. Nevertheless, the impact of the plan on minority voters is unquestionably an "important starting point" in analyzing discriminatory purpose. *Arlington Heights*, 429 U.S. at 266 (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)). As an alternative basis for refusing to consider the impact of the Board's action on black voters as evidence of discriminatory purpose, however, the majority incorrectly indicated that the "adoption of one non-retrogressive plan [with no majority-black districts] rather than another" plan with one or more cannot by itself give rise to an inference of racial intent. App. 35a, 25a n.13.

In so doing, the majority mistakenly equates this case, in which the School Board has successfully prevented the election of a single black member for its entire history, with *Miller*, in which the Attorney General had refused to preclear an admittedly *ameliorative* plan—*i.e.*, a plan that would have increased the number of majority-black districts. App. 35a. The effect of preventing any black candidates from being elected, however, clearly may "by itself" support an inference of discriminatory intent. Such evidence must be weighed with the other factors described in *Arlington Heights*.

The majority's decision below is in clear conflict with *Miller*. While this Court in *Miller* does quote *Beer*, 425 U.S. at 141, for the proposition that "the purpose of § 5 always has been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise," 115 S. Ct. at 2493, the Court's decision in *Beer* addressed only the meaning of "discriminatory effect" under Section 5. In *Miller* itself, this Court reaffirmed that purposeful racial discrimination remains an independent basis for a Section 5 objection. The Court stated that even an "ameliorative" plan could violate Section 5 if "the new apportionment itself so

discriminates on the basis of race or color as to violate the Constitution." *Id.* at 2492 (citations omitted). If an ameliorative plan can violate Section 5, clearly a plan that perpetuates exclusive white control of the electoral process can as well. In *Miller*, this Court also expressly acknowledged its previous decisions, *see e.g.*, *City of Pleasant Grove* v. *United States*, 479 U.S. 462, 469 (1987), which recognize discriminatory purpose as a distinct basis for the denial of preclearance under Section 5. *See Busbee*, 549 F. Supp. at 516-17; *City of Port Arthur* v. *United States*, 517 F. Supp. 987 (D.D.C. 1981), *aff'd*, 459 U.S. 159 (1982).

The majority's ruling not only misapprehends *Miller*, but also is inconsistent with these other decisions. It is well-settled that in analyzing discriminatory purpose under Section 5, the adverse impact on minority voting rights may be considered even when that impact is not retrogressive. *Busbee*, 549 F. Supp. at 516 (finding discriminatory purpose behind Georgia's refusal to create its first majority black congressional district, despite finding that the adopted plan was not retrogressive). Indeed, this Court has repeatedly conducted or approved a complete inquiry into the presence of discriminatory purpose in cases where there was no retrogression. *Pleasant Grove,* 479 U.S. at 470-71 n.11; *City of Richmond v. United States*, 422 U.S. 358, 378-79 (1975); *Port Arthur*, 517 F. Supp. at 1019.

Other more recent panels of the D.C. District Court have followed these precedents and split with the majority on this issue. The unanimous panel in *New York* found that "a stark pattern of racially discriminatory [though non-retrogressive] effects" could even be "determinative" in a Section 5 purpose inquiry. 874 F. Supp. at 399. The three-judge panel in *Arizona* agreed that non-retrogressive discriminatory effects can give rise to an inference of discriminatory purpose, but disagreed with the *New York* court that such an impact could only be determinative in a "stark" or "extreme"

case. 887 F. Supp. at 322. As the *Arizona* court correctly noted, "[a]doption of such a rule would be entirely inconsistent with *Arlington Heights* and would seriously weaken section 5." *Id.* The majority's rule here would have an even worse effect on Section 5.

Indeed, this case starkly demonstrates why the majority's singular misreading of *Miller*, as effectively limiting Section 5's purpose inquiry to instances of retrogression, makes no sense. Bossier has never had a black School Board member elected. Retrogression here is impossible. Minority voting strength cannot be diluted any more effectively than it already is. The majority's legal error, in refusing to consider the effect of the plan on black voters, transforms the Board's "extraordinary success in resisting integration . . . [into] a shield for further resistance. Nothing could be further from the purposes of the Voting Rights Act." *Pleasant Grove,* 479 U.S. at 472. What Justice O'Connor has termed "the inexorable zero," still has an undeniable resonance as a bellwether of unconstitutional discrimination, *see Johnson v. Transportation Agency*, 480 U.S. 616, 657 (1987) (O'Connor, J., concurring in the judgment). In the context of voting rights, this Court has long recognized that "[b]ecause it is sensible to expect that at least some blacks would have been elected [to the Board], the fact that none have ever been elected is important evidence of purposeful exclusion." *Rogers,* 458 U.S. at 623-24. Indeed, "nothing is as emphatic as zero." *United States* v. *Hinds County Sch. Bd.*, 417 F.2d 852, 858 (5th Cir.), *opinion supplemented,* 423 F.2d 1264 (5th Cir. 1969), *cert. denied,* 396 U.S. 1032 (1970). A situation of exclusive white control cannot be ignored as evidence of racial intent because it technically is not "retrogressive."

Moreover, Bossier is not alone; it is crucial for this Court to correct the error below and to resolve the split within the D.C. District Court on this issue, because there are hundreds of governmental bodies in covered

jurisdictions which, like the School Board, have no black elected members. Countless others may currently dilute minority voting strength, and the majority's opinion would effectively insulate intentional discrimination in these jurisdictions from Section 5 scrutiny as well.

III. THIS COURT SHOULD CORRECT THE SUBSTANTIAL LEGAL ERROR MADE BY THE MAJORITY OF THE SHARPLY DIVIDED THREE-JUDGE PANEL IN SHIFTING THE BURDEN OF PROOF FROM THE SCHOOL BOARD TO THE ATTORNEY GENERAL.

Under Section 5, the burden of proving that the adopted plan does not have a discriminatory purpose rests squarely with the School Board. 42 U.S.C. § 1973c; *South Carolina* v. *Katzenbach*, 383 U.S. 301, 335 (1966); *City of Rome* v. *United States*, 446 U.S. 156, 183 n.18 (1980); *Georgia* v. *United States*, 411 U.S. 526, 538 (1973). Here, however, the majority relieved Bossier of its burden of proof through two different types of legal errors. First, as discussed above, the majority improperly excluded from consideration much of the "extensive record" of discriminatory purpose, App. 37a, relieving the School Board of the burden of rebutting this evidence. Second, with respect to the "direct" evidence of racial intent that it did consider, the majority improperly invented explanations not offered by Bossier.

By inventing its own non-discriminatory interpretations of inculpatory statements by Board members in the absence of any evidence from Bossier, the majority improperly shifted the burden of proof to the Attorney General. The Attorney General and the Defendant-Intervenors offered evidence of statements by Board Members directly indicating that Board members were "hostile" to the idea of black representation on the Board. The School Board failed to offer *any* evidence explaining or rebutting two of these three statements. For example, School Board member Henry Burns said

that Bossier was "hostile to black representation on the School Board." App. 31a. Bossier offered no evidence explaining this statement. Indeed, the majority acknowledges that the School Board did not even "cross-examine . . . on this point." *Id.* Nevertheless, the majority concluded on its own that Burns did not mean that the Board was hostile to "black representation" but that it merely objected to "drawing of majority-black districts in order to ensure black representation on the Board." *Id.* Likewise, with respect to Thomas Myrick's statement to black leaders that he would not let "them" take his seat, the majority, based on no record evidence, attributes this to a "strong desire not to have his district so changed that his constituency is obliterated." *Id.* at 32a.[8]

Explaining away unrebutted evidence, however, is incorrect as a matter of law. The majority misconstrues "the function of judicial review when it . . . speculate[s] upon what *might have*" been meant by these statements. *N.L.R.B.* v. *Great Dane Trailers, Inc.*, 388 U.S. 26, 34-35 (1967) (emphasis added). "In light of the courts' customary reliance on a litigant to select the interpretation of the facts most favorable to his own case, this is a singular result indeed." *Miller* v. *WFLI Radio Inc.*, 687 F. 2d 136, 138 (6th Cir. 1982) (vacating

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[8] Of course, the desire not to have his constituency changed can itself be discriminatory, where as here, racially polarized voting makes a predominantly white constituency valuable to a white incumbent. *See Perkins*, 675 F.2d at 214 (similar statement by white public official about difficulty of reelection in black-majority district recognized as "direct evidence of discriminatory intent"). *See also Barnett*, 32 F.3d at 1199 (if "in order to protect incumbents . . . the redistricting authority deliberately adopted devices for limiting black representation (. . . because white incumbents were thought particularly vulnerable to challenge . . .), they would be engaged in deliberate racial discrimination") (Posner, J., citing *Ketchum* v. *Byrne*, 740 F.2d 1398, 1408 (7th Cir. 1984), *cert. denied*, 471 U.S. 1135 (1985)).

and remanding Title VII action where trier of fact invented non-discriminatory rationale for defendant's conduct). By inventing non-discriminatory interpretations of Board members' statements, the majority, like the lower court in *WFLI Radio*, deprived the Attorney General and the Defendant-Intervenors of a "fair opportunity" to prove discrimination and misapplied the applicable burden of proof. *Id.* at 139 (citing *Texas Dep't of Community Affairs* v. *Burdine*, 450 U.S. 248, 255-56 (1981)).

The majority made clear the source of its discomfort with the burden of proof established by Section 5. The majority focused on the "federalism costs" of Section 5 and the "anomaly" of "placing a burden of proving non-discrimination on the plaintiff." App. 23a, 25a. As the dissent below points out, however, "Congress decides how to write the country's statutes, and Congress clearly believed that the states' open defiance of the Equal Protection Clause - what [this] Court called an 'insidious and pervasive evil' - was serious enough to warrant the 'federalism costs' of the Voting Rights Act." App. 38a-39a n.1 (citations omitted). The majority was not free to recalculate those costs and implicitly rewrite Section 5.

IV. THIS COURT SHOULD CORRECT THE SUBSTANTIAL LEGAL ERROR MADE BY THE MAJORITY IN HOLDING THAT SECTION 5 REQUIRES A COVERED JURISDICTION MERELY TO ARTICULATE SOME NON-DISCRIMINATORY REASON FOR ADOPTING AN ELECTION PLAN.

While the majority found that a number of the School Board's purported reasons for adopting its election plan were pretextual, App. 27a n.15, it concluded that "at least two of [its alleged reasons] are 'legitimate, nondiscriminatory motives.'" *Id.* at 27a (quoting *New York*, 874 F. Supp. at 400). The presence of some legitimate reason for an action, however, is legally insufficient to establish that it was not unconstitutional

under *Arlington Heights*. Moreover, the majority's decision applies a lower standard to Bossier than did the D.C. District Court panel in *New York*, creating yet another split in the courts below.

The majority acknowledges that the Board lied about several of its alleged reasons for adopting the plan, App. 27a n.15, but nevertheless credits two: "guaranteed preclearance" and "easy implementation." The dissent effectively exposes those rationales as pretextual. *Id.* at 56a-59a.[9] But even accepting these alleged motivations as true, they neither directly refute nor outweigh the voluminous evidence in this record that race was "a motivating factor" in the Board's decision. *Arlington Heights*, 429 U.S. at 265-66.

Arlington Heights left no doubt that proving discriminatory intent does *not* require proof "that the

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[9] The majority also acknowledges that if the School Board knew that the Police Jury plan was approved only by virtue of misrepresentations to the Attorney General, the so-called "guaranteed preclearance" rationale would itself demonstrate discriminatory intent. App. 28a-29a. The majority indicated, however, that it knew "of no evidence suggesting the School Board had any knowledge that the Police Jury plan had been precleared illegitimately." *Id.* The parties stipulated, however, that School Board member Thomas Myrick met several times with police jurors and their cartographer during the police jury redistricting process. *Id.* at 5a, 81a, 85a-86a, 93a-94a, 95a (¶¶ 48, 61, 85, 91). The undisputed record is clear that Mr. Joiner and the Police Jury misrepresented the facts concerning its redistricting to the Attorney General. *Id.* at 68a-69a, 76a, 80a-81a, 82a-83a, 84a, 87a (¶¶ 11, 36, 47, 52-53, 57, 65-66). Myrick, moreover, despite the Board's stipulations about his meetings with Joiner and the Police Jurors, App. 81a, 93a-94a (¶¶ 48, 85); *id.* at 5a (and Joiner's live testimony about "probably half a dozen" such meetings, Tr. 139-42 (April 10, 1995)), felt concerned enough about their implications to deny on the witness stand that any of them took place. Tr. 78-79, 127-28 (April 10, 1995). The majority does not even attempt to reconcile these contradictions.

challenged action rested solely on racially discriminatory purposes." *Id.* at 265. This Court recognized that "rarely" does a government body act "motivated solely by a single concern." *Id.* Therefore, the test must be whether a discriminatory purpose "has been *a motivating factor* in the decision." *Id.* at 265-66 (emphasis added). The majority, therefore, erred in assuming that if a legitimate rationale for Bossier's action, or a nondiscriminatory interpretation of School Board members' statements, were not disproved, Bossier was entitled to preclearance. This Court should correct this serious legal error.

The majority's decision also conflicts with the recent D.C. District Court ruling on this issue in *New York*. In articulating the burden of proof under Section 5, the *New York* court plainly stated that covered jurisdictions must come forward not only with "evidence of legitimate, nondiscriminatory motives" but with evidence "that the proposed changes were not [also] motivated by a discriminatory purpose." 874 F. Supp. at 400. This Court should reaffirm the *Arlington Heights* standard and resolve this split among the panels of the D.C. District Court.

V. THIS COURT SHOULD RESOLVE THE QUESTION OF WHETHER A CLEAR VIOLATION OF SECTION 2 CONSTITUTES AN INDEPENDENT BASIS FOR DENYING PRECLEARANCE TO A NON-RETROGRESSIVE VOTING CHANGE.

The Attorney General has adopted a regulation that states:

> In those instances in which the Attorney General concludes that, as proposed, the submitted change is free of discriminatory purpose and retrogressive effect, but also concludes that a bar to implementation of the change is necessary to prevent a clear violation of amended section 2, the Attorney General shall withhold section 5 preclearance.

28 C.F.R. 51.55(b)(2) (1995). The court below rejected the interpretation of Section 5 implicit in this regulation. Defendant-Intervenors, however concur that the Attorney General has responsibility under Section 5 to object to a voting change that constitutes a clear violation of Section 2. *See* Jurisdictional Statement of Janet Reno, *et al.*, at 23-27 (filed Mar. 11, 1996).

This Court should correct this substantial legal error. However, it may not prove necessary to reach this issue in this appeal because the evidence below, when fully considered, "demonstrates overwhelmingly" that Bossier's action "was a thinly veiled effort to deny black voters a meaningful opportunity for representation on the School Board." App. 63a, 64a.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BOSSIER PARISH SCHOOL BOARD, Plaintiff,	)	
v.	)	
JANET RENO, *Defendant,*	)	Civil Action No. 94-01495 (CRR) (LHS) (GK)
GEORGE PRICE, *et al.,* *Defendant Intervenors.*	)	

DEFENDANT-INTERVENORS' NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that all of the defendant-intervenors in the above named case, George Price, Leroy Harry, Thelma Harry, Clifford Doss, Jerry Hawkins, Odis Easter, Barbara Stevens King, Hurie Jones, Grover Cleveland Jaggers, Floyd Marshall, and Rubie Fouler, hereby appeal to the United States Supreme Court from the final judgment of the three-judge district court, entered on November 2, 1995, granting preclearance, pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, to the plaintiff.

This appeal is taken pursuant to 42 U.S.C. § 1973c.

Respectfully submitted,

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January 2, 1996

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